



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

**JUL 17 2012**

Miguel Figueroa  
Exodo 80, Inc.  
7274 NW 25 Street  
Miami, FL 33122

RE: MUR 6531  
[www.Obama-Biden2012.org](http://www.Obama-Biden2012.org)  
Exodo 80, Inc.  
Miguel Figueroa

Dear Mr. Figueroa:

On February 16, 2012, the Federal Election Commission ("Commission") notified [www.Obama-Biden2012.org](http://www.Obama-Biden2012.org), Exodo 80, Inc., and you, in your individual capacity, of a complaint filed by Obama for America alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended (the "Act"). A copy of the complaint was forwarded to you at that time.

Upon further review of the allegations contained in the complaint and information supplied by you, the Commission, on June 29, 2012, found that there is reason to believe that Obama-Biden 2012, Exodo 80, Inc., and you violated 2 U.S.C. §§ 441h(b) and 441d(a). The Factual and Legal Analysis, which formed a basis for the Commission's findings, is attached for your information.

You may submit any factual or legal materials that you believe are relevant to the Commission's consideration of this matter. Please submit such materials to the General Counsel's Office within 15 days of receipt of this letter. Where appropriate, statements should be submitted under oath. In the absence of additional information, the Commission may find probable cause to believe that a violation has occurred and proceed with conciliation.

Please note that you have a legal obligation to preserve all documents, records, and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519.

If you are interested in pursuing pre-probable cause conciliation, you should so request in writing. See 11 C.F.R. § 111.18(d). Upon receipt of the request, the Office of the General Counsel will make recommendations to the Commission either proposing an agreement in settlement of the matter or recommending declining that pre-probable cause conciliation be

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pursued. The Office of the General Counsel may recommend that pre-probable cause conciliation not be entered into at this time so that it may complete its investigation of the matter. Further, the Commission will not entertain requests for pre-probable cause conciliation after briefs on probable cause have been mailed to the respondent.

Requests for extensions of time will not be routinely granted. Requests must be made in writing at least five days prior to the due date of the response and specific good cause must be demonstrated. In addition, the Office of the General Counsel ordinarily will not give extensions beyond 20 days.

If you intend to be represented by counsel in this matter, please advise the Commission by completing the enclosed form stating the name, address, and telephone number of such counsel, and authorizing such counsel to receive any notifications and other communications from the Commission.

This matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A) unless you notify the Commission in writing that you wish the matter to be made public.

If you have any questions, please contact Margaret Ritzert Howell, the attorney assigned to this matter, at (202) 694-1650.

On behalf of the Commission,



Caroline C. Hunter  
Chair

Enclosures

Factual and Legal Analysis

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**FEDERAL ELECTION COMMISSION****FACTUAL AND LEGAL ANALYSIS**

RESPONDENTS:    Obama-Biden 2012                      MUR: 6531  
                         Exodo 80 Inc.  
                         Miguel Figueroa

**I.    GENERATION OF MATTER**

This matter was generated by a complaint filed by Obama for America ("OFA"). *See* 2 U.S.C. § 437(g)(a)(1).

**II.    FACTUAL AND LEGAL ANALYSIS****A.    Factual Background**

Exodo 80 Inc. ("Exodo 80") is registered with the Florida Department of State as a non-profit corporation. Articles of Incorporation (June 13, 2011), *available at* [www.dos.state.fl.us](http://www.dos.state.fl.us). According to its website, Exodo 80 is a "nonprofit foundation dedicated to creating organizations that are designed to work for the betterment of life and human life." *See* [www.exodo80.com](http://www.exodo80.com). The website lists and links to the websites of eight other organizations that it "sponsors," one of which is "Obama-Biden 2012" at [www.obama-biden2012.org](http://www.obama-biden2012.org). Miguel Figueroa is the president and registered agent of Exodo 80.

While the home page of Exodo 80's website continues to display a link to the Obama-Biden 2012 website, which was functioning as recently as June 5, 2012, it is no longer operational. According to previously downloaded pages of the Obama-Biden website, Obama-Biden 2012 sought to create clubs to support the re-election of the President. *See* [www.obama-biden2012.org](http://www.obama-biden2012.org) (on file with the Commission). The website prominently featured the OFA logo and an image of President Obama and Vice President Biden superimposed over what appears to be an audience at a campaign rally. The website provided examples of activities undertaken by

1 Obama-Biden 2012, including distributing flyers, postcards, and souvenirs on the street; placing  
2 “bumper [*sic*] stickers on automobiles;” and giving “cloths [*sic*], food, and hope to the  
3 homeless.” *Id.* The website also included a tab labeled “Donate Now,” which allowed visitors  
4 to use Paypal to make online donations to Obama-Biden 2012.<sup>1</sup> *See id.* Another tab, labeled  
5 “Souvenirs,” linked to a page that stated, “When you donate to Obama-Biden2012.org, we will  
6 be happy to send you the following gifts and souvenirs,” and included images of t-shirts, key  
7 chains, and coffee mugs featuring the OFA logo and pictures of the candidates. *Id.*

8 In the “Comments” section of the Obama-Biden 2012 website, one visitor stated, “I  
9 would like to sign up for the 2012 re-election campaign to volunteer for My President and Vice-  
10 President . . . . Let me know how to get started with helping them get Re-Elected.” Margaret  
11 Phipps, Comment to Obama-Biden 2012 (June 25, 2011, 6:23 pm), [http://obama-](http://obama-biden2012.org/wordpress/?p=4)  
12 [biden2012.org/wordpress/?p=4](http://obama-biden2012.org/wordpress/?p=4).

13 Obama-Biden 2012 was also responsible for a direct mail piece asking recipients to  
14 “work for Obama-Biden reelection,” and directing them to [www.obama-biden2012.org](http://www.obama-biden2012.org). *See*  
15 Compl. Attach. 1. The mail piece provided recipients with a form to make a “tax free  
16 contribution,” which instructed them to make checks payable to Obama-Biden 2012 or click on  
17 the “Donate Now” tab on its website. *Id.*

18 OFA alleges that the Obama-Biden 2012 website and direct mailer fraudulently represent  
19 Obama-Biden 2012 as an organization acting on behalf of OFA for the purpose of soliciting  
20 contributions, in violation of 2 U.S.C. § 441h(b). Compl. at 2. OFA states that it did not  
21 establish or authorize [www.obama-biden2012.org](http://www.obama-biden2012.org), which misappropriates OFA’s website logo

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<sup>1</sup> The link to Paypal was functional in March 2012, but when visited on May 11, 2012, the link to Paypal had been removed, and the page instructed visitors to donate by check made payable to Exodo 80. When last visited on June 5, 2012, the page stated that Obama-Biden 2012 was no longer accepting donations, and included an image of the April 6, 2012, clarification letter. *See infra* fn. 2.

1 and merchandise. *Id.* at 1. OFA also states that it has never received any contribution from, or  
2 had any association with, Obama-Biden 2012. *Id.*

3 In response to the complaint, Respondents take responsibility for the direct mail piece,  
4 stating that, "the reason for the sending of these letters was [*sic*] independent actions to support  
5 the reelection of Obama." Resp. at 1. Figueroa also claims, however, that, "our intention was  
6 not to make fraudulent acts." *Id.* at 2. The response offers to provide Exodo 80's bank  
7 statements to show that it received no external funding, and states that it will stop sending letters  
8 on behalf of Obama-Biden 2012, discontinue the website, return any future contributions, and  
9 "destroy any advertising." *Id.* at 1-2.<sup>2</sup>

10 Figueroa filed two supplemental responses. On April 10, 2012, he submitted a response  
11 asserting that Exodo 80 had returned a \$100 donation, but which also suggested that Exodo 80  
12 intended to use donations to Obama-Biden 2012 to finance other programs: "EXODO80 has  
13 eight programs that are sleeping because their only financial support broke. But through work  
14 www.obama-biden.org would receive a donation as we could to work in other programs . . . ."  
15 Supp. Resp., Apr. 12, 2012 (hereinafter, "April Response"). This response also included what  
16 appears to be a request for donations to pay for a trailer emblazoned with "Obama-Biden 2012"  
17 and pictures of the candidates. April Response at 2. On May 11, 2012, Figueroa submitted a  
18 second supplemental response consisting of copies of two voided checks made out to Obama-  
19 Biden 2012, totaling \$300, and two bank statements for Exodo 80, Inc., DBA Obama-Biden  
20 2012. Second Supp. Resp., May 11, 2012 (hereinafter, "May Response"). The first statement,  
21 dated November 30, 2011, shows \$100.16 in deposits and no withdrawals. The second

<sup>2</sup> The Office of the General Counsel sent Figueroa a clarification letter advising him not to "destroy" any materials pertaining to this matter, and accepting his offer to provide Exodo 80's bank statements. Letter from Daniel A. Petalas, Assoc. Gen. Counsel, FEC to Miguel Figueroa, President, Exodo 80, Inc. (Apr. 6, 2012).

statement, dated February 29, 2012, shows no deposits and withdrawals of \$87.50, the total balance of the account at that time. Figueroa asserts that this was the last bank statement before he closed the account.

## **B. Legal Analysis**

### **1. Fraudulent Misrepresentation**

The Federal Election Campaign Act of 1971, as amended, (the "Act") prohibits a person from fraudulently misrepresenting himself as speaking, writing, or otherwise acting for or on behalf of any candidate or political party or employee or agent thereof for the purpose of soliciting contributions or donations. 2 U.S.C. § 441h(b); *see also* 11 C.F.R. § 110.16. Section 441h differs from common law fraudulent misrepresentation in that it does not require proof of the common law requirements of justifiable reliance and damages. *See* Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 Fed. Reg. 76,962, 76,969 (Dec. 13, 2002) (explanation and justification) (citing *Neder v. United States*, 527 U.S. 1, 24-25 (1999)). Additionally, even absent an express misrepresentation, a scheme devised with the intent to defraud is deemed a fraud under the Act and Commission regulations if it was reasonably calculated to deceive persons of ordinary prudence and comprehension. *See United States v. Thomas*, 377 F.3d 232, 242 (2d Cir. 2004) (citing *Silverman v. United States*, 213 F.2d 405 (5th Cir. 1954)); *FEC v. Novacek*, 739 F.Supp.2d 957, 961 (N.D. Tex. 2010) (finding that defendants knowingly and willfully violated 2 U.S.C. § 441h(b)); *see also* Factual & Legal Analysis at 9, MUR 5951 (Californians for Change).

Respondents represent themselves as acting on behalf of OFA in several ways. Aside from operating under the name "Obama-Biden 2012" at the domain name www.obama-biden2012.org, they placed the OFA logo both on the pages of this website and on merchandise

1 that it advertised on this website. The website also featured photographs of volunteers in  
2 Obama-Biden 2012 t-shirts, apparently serving food to the homeless. At least one visitor to the  
3 site appears to have believed that the organization is acting on behalf of OFA, because she left a  
4 comment stating that she would like to sign up for the 2012 reelection effort. Additionally,  
5 Respondents' direct mail piece invites recipients to "work for Obama-Biden reelection."

6 Obama-Biden 2012 appears to have misrepresented itself as being associated with OFA  
7 for the purpose of soliciting donations or contributions. The website featured a link to "Donate  
8 Now," which until recently asked visitors to make a donation to Obama-Biden 2012 via Paypal.  
9 Similarly, the direct mail piece invites recipients to make a "tax free contribution" to Obama-  
10 Biden 2012, and provides various options by which to do so.<sup>3</sup>

11 The Obama-Biden 2012 website and mailer appear capable of misleading persons of  
12 ordinary comprehension. There is no dispute that Respondents used OFA's campaign logo and  
13 candidate images to solicit contributions and donations without the authorization of OFA. There  
14 is no information to indicate that Respondents had any intention of forwarding the contributions  
15 they received to OFA; instead, the April Response seems to indicate that they intended to use the  
16 contributions to fund their other programs. Figueroa specifically asserts, however, that the  
17 Respondents did not act with the intent to defraud.

18 Based on the available information, which indicates that Obama-Biden 2012 represented  
19 itself as acting on behalf of OFA to solicit contributions in a scheme reasonably calculated to  
20 deceive, the Commission found reason to believe that the Respondents violated 2 U.S.C.  
21 § 441h(b).

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<sup>3</sup> It is not entirely clear, however, whether Figueroa's intent was to defraud potential donors or to establish an unauthorized campaign auxiliary organization.

2. Disclaimer Violation

Under the Act, public communications that solicit contributions are required to include a disclaimer as to who paid for and authorized the communication, and specifically state whether the communication was authorized by a candidate or candidate's committee. 2 U.S.C. § 441d(a); 11 C.F.R. § 110.11(a)(3). Commission regulations define "public communication" to include a mass mailing, but not internet communications, except for those placed for a fee on another person's website. 11 C.F.R. § 100.26.

Obama-Biden 2012's website constitutes an internet communication, but not one that was placed for a fee on another person's website. Accordingly, it does not qualify as a public communication under 11 C.F.R. § 100.26 and does not violate the Act. While there is no information as to the exact quantity disbursed, the direct mail piece, however, appears to constitute a mass mailing under 11 C.F.R. § 100.27, and therefore a public communication under 11 C.F.R. § 100.26. Because the direct mail piece does not include the information required by the statute, the Commission found reason to believe that Respondents violated 2 U.S.C. § 441d(a) by failing to include a proper disclaimer on the communication.